BEFORE THE 1 POLLUTION CONTROL HEARINGS BOARD STATE OF WASHINGTON 2 IN THE MATTER OF PCHB Nos. 79-7 and 79-67 CHEMICAL PROCESSORS, INC., AND PALMER COKING COAL CO. 4 FINAL FINDINGS OF FACT, CONCLUSIONS OF LAW Appellants, 5 AND ORDER v. 6 STATE OF WASHINGTON, 7 DEPARTMENT OF ECOLOGY, 3 Respondent. 9

This matter, the consolidated appeals from the issuance of a \$2,500 civil penalty to each appellant and the appeal by Chemical Processors of an administrative order, came before the Pollution Control Hearings Board, Nat W. Washington, Chairman, Chris Smith and David Akana (presiding), at a formal hearing in Lacey on October 11 and 12, 1979.

Appellant Cnemical Processors was represented by its attorney, Joel Rindai; appellant Palmer Coking Coal was represented by Evan

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Morris, a partner; respondent Department of Ecology was represented by Charles W. Lean, Assistant Actorney General.

Having heard the testimony, having examined the exhibits, and having considered the contentions of the parties, the Board makes these

## FINDINGS OF FACT

Ι

Appellant Palmer Coking Coal Company (PCC) owns certain property near Landsburg in King County, which was formerly a coal mine. A 40-foot wide by 50-foot deep and 600-foot long trench, caused by the subsidence of the ground over a portion of the coal mine, is visible at the ground surface. The trench contains broken shale, sandstone, rock, dirt, etc. In 1971 the trench was used as a disposal site for general industrial waste. In 1972, King County granted PCC a "special permit" to dispose of stumps and brush in the trench. Disposal of general industrial waste therein was terminated. Both PCC and Chemical Processors, Inc. (CP) were involved at the proceedings before the county and knew, or should have known, of the county's disposal limitations at the Landsburg site.

II

Appellant Chemical Processors, Inc. is in the business of reprocessing waste oils from ships and other industrial sources at its facility at Pier 91 in Seattle. Oil is separated from other substances and marketed; the remaining substance is an oily sludge containing about 3 percent oils, 57 percent water and 40 percent

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solids which is disposed of at various landfills, including Tacoma and Midway sites. In April of 1978, CP sought another area to dispose of its sludge and came upon the site owned by PCC near Landsburg.

III

Thereafter, appellant CP sought permission from PCC to dispose of its oily sludge at the Landsburg site. PCC contended that CP assured it that the material was "bottom-sediment and water" prior to its agreement to allow dumping. CP contends that the type of material, an "oily sludge" was explained to PCC, and upon learning that the same material was being disposed of by CP at the Midway and Tacoma landfills, PCC thought it would be acceptable at the Landsburg site. In any event, permission was giver by PCC, and CP began disposal of 4500 gallon truckloads at the site commencing on May 5, 1978. Seven loads were disposed of before operations were halted on June 8, 1978.

ΙV

On May 17 or 18, 1978, respondent's inspector received notification that wastes were being disposed of at PCC's Landsburg site. On May 19, 1979, he visited the site and caused a sample of the substance to be taken. The inspector observed water under the oily substance slowly flowing north and then disappearing into the ground. At that time, four loads had been dumped at the site. The inspector took time to gather more information regarding the participants and, or June 8, 1978, gave oral notice to the trucking company to stop dumping and to inform appellants CP and PCC to stop

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also.

V

As a result of the foregoing events, PCC and CP were each issued a \$2,500 civil penalty pursuant to RCW 90.48.350 for the discharge of oil into public groundwaters in violation of RCW 90.48.320. The penalties were appealed. In addition, PCC was ordered to cease and desist from depositing wastes upon its land without first procuring the appropriate permits. No appeal of the order was taken by PCC. Chemical Processors also received an order which required it to ascertain whether the sites it used were authorized for disposal of its wastes and to submit to the Department the volume of waste it generated as well as when and where such wastes were to be disposed of. CP appealed this order.

VI

Neither the state's geologist nor any other witness could say whether the oil contained in the sludge dumped in the trench at the Landsburg site reached ground waters. However, continued dumping of the sludge could eventually pose a threat to the quality of ground and possibly surface waters. The threat would extend to nearby domestic wells, and to the Cedar River and Seattle's water supply intake which lie to the north.

VII

Any Conclusion of Law which should be deemed a Finding of Fact is hereby adopted as such.

From these Findings, the Board comes to these

FIMAL FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

## CONCLUSIONS OF LAW

Ι

RCW 90.48.320 makes it unlawful for "oil" to enter "waters of the State" from any facility or installation, regardless of the cause of the entry or fault of the person having control over the oil unless, inter alia, the discharge was caused by negligence on the part of the state.

RCW 90.48.320 provides that:

. . . Any person who intentionally or negligently discharges oil, or causes or permits the entry of the same, small incur, in addition to any other penalty as provided by law, a penalty in an amount of up to twenty thousand dollars for every such violation; said amount to be determined by the director of the commission after taking into consideration the gravity of the violation, the previous record of the violator in complying, or failing to comply, with the provisions of chapter 90.48 RCW, and such other considerations as the director deems appropriate. Every act of commission or omission which procures, aids or abets in the violation shall be considered a violation under the provisions of this section and subject to the penalty herein provided for . .

"Oll" is defined as "oil, including gasoline, crude oil, fuel oil, diesel oil, lubricating oil, sludge, oil refuse, or any other petroleum related product." RCW 90.48.315(7).

"Waters of the state" is defined as "lakes, rivers, ponds, streams, inland waters, underground water, salt waters, estuaries, tidal flats, peaches and lands adjoining the seacoast of the state, sewers, and all other surface vaters and watercourses within the jurisdiction of the State of Washington." RCW 90.48.315(10).

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The evidence clearly shows that "oil" was intentionally dumped

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on PCC's property and that PCC and CP are responsible for such dumping. Before a violation of RCW 90.48 30 or .350 can be remed to occur, oil must enter "waters of the e." Base nn t = preponderance of the evidence, we cannot I hat oil e rid the ground water of the state. It was establ that these as a small amount of water under the only subs the which slowly flowed ⇒ared into the ground, northward in the trench a few feet and d e of the dence that but it was not established by the prepothis was "waters of the state" rather - ate which had been a d; \_~ en ~umped constituent part of the oily sludge wh by CP at a higher elevation on the si the trench he., there was no evidence of surface was r-satu 11 upstream of the spill It follows tha √10lat10 tat 3 menaltic  $x \cdot y + y \cdot z$ was proven. Accord :gly, the \$2,000 c and CP should be vacated.

II.

## RCW 90.48.120 provides that:

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. . .(1) Whenever, in the JINION the dep ∘nt, is a the any person shall violate 0.7to provisions of this chapt Lis to uin the or disc \_\_\_\_ed or "' polluting content of water of the state, the artment discharged into any wa shall notify such persef its determination registered mail. Such ermination shall r lentive under RCW 135. constitute an order or - ~eceipt of no such Within thirty days from determination, such pe shall file wit' cating that step department a full repo been and are being tak to control such w. or pollution or 'o oth .wise comply with the determination of the document. Whereupon department shall issue such order or direct 2**5** 1t deems appropriate under the dircumstances, shall notify such person thereof by registe mail.

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Whenever a person is about to violate the provisions of chapter 90.48 RCW the department can take appropriate action under the above The evidence shows that the continued application of CP's section. oily sludge upon the PCC site will, at some future time, cause the pollution of underground waters. The nature of CP's waste is such that it must be disposed of with some care in order to protect the waters of the state. CP contends that it should not be required to comply with the department's order which requires it to secure a written statement from a disposal site owner that proper permits have been secured which authorize the deposition of the particular Because CP has specific knowledge of the nature of its waste waste. and this information may not be understood by an operator of a disposal site, a written statement by such operator will avoid misunderstandings as occurred here. This portion of the Order is reasonable in scope and should be affirmed. Part of the department's order requires CP to submit information regarding the volume of wastes generated, as well as when and where they are to be disposed of. The appellant had been utilizing an unauthorized site for dumping sludge containing oil and metallic pollutants which posed a threat not only of discharging oil into the waters of the state in violation of RCW 90.48.320, but also of discharging metallic polluting materials such as lead, nickel, chromium, cadmium, copper, zinc, and manganese in violation of RCW 90.48.080. It was dumping large quantities of similar sludge at other dump sites in the State. Under these circumstances, the Department of Ecology did not abuse the broad discretionary powers

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granted to it under RCW 90.48.120 in issuing part two of the order. 1 Part two of the order should be affirmed. 2 ΙV 3 Any Finding of Fact which should be deemed a Corclusion of Law 4 is hereby adopted as such. 5 From these Conclusions, the Board enters this 6 ORDER 7 1. The \$2,500 civil penalty issued to Chemical Processors, Inc. 8 is vacated. 9 The \$2,500 civil penalty issued to Palmer Coking Coal 10 Company is vacated. 11 Administrative Order DE 78-313 to Chemical Processors, Inc., 12 dated December 14, 1978 is affirmed. 13 DATED this day of December, 1979. 14 POLLUTION CONTROL HEARINGS BOARD 15 16 17 18 19 20 (See Dissent) 21 DAVID AKANA, Member 22 23  $2 \div$ 25 Jb. FINAL FINDINGS OF FACT, CONCLUSIONS OF LAW 27

AND ORDER

AKANA, David (concurring and dissenting) -- I concur with the decision and order of the majority except as it relates to Paragraph 2 of Administrative Order DE 78-313; I would affirm Paragraph 1 and reverse Paragraph 2 of the Administrative Order.

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